



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2013-0690; FRL-9919-65-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia's Redesignation Request and Associated Maintenance Plan of the West Virginia Portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of West Virginia's request to redesignate to attainment the West Virginia portion of the Martinsburg-Hagerstown, WV-MD nonattainment area (the Martinsburg Area or Area) for the 1997 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). EPA is also approving as a revision to the West Virginia State Implementation Plan (SIP) the associated maintenance plan to show maintenance of the 1997 annual PM_{2.5} NAAQS through 2025 for the Area. As part of this action, EPA is making a determination that the Martinsburg Area continues to attain the 1997 annual PM_{2.5} NAAQS. The maintenance plan includes the 2017 and 2025 PM_{2.5} and nitrogen oxides (NO_x) mobile vehicle emissions budgets (MVEBs) for Berkeley County, West Virginia for the 1997 annual PM_{2.5} NAAQS which EPA is approving for transportation conformity purposes. Furthermore, EPA is approving, as a revision to the West Virginia SIP, the 2007 base year emissions inventory for the Area for the 1997 annual PM_{2.5} NAAQS. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0690. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 5, 2013, the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) formally submitted a request to redesignate the West Virginia portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. Concurrently, WVDEP submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years. The

maintenance plan also includes a 2007 base year emissions inventory for PM_{2.5}, NO_x, sulfur dioxide (SO₂), volatile organic compounds (VOC) and ammonia (NH₃) for the 1997 annual PM_{2.5} NAAQS in order to meet the emissions inventory requirements of section 172(c)(3) of the CAA. In addition, the maintenance plan includes the 2017 and 2025 PM_{2.5} and NO_x MVEBs used for transportation conformity purposes for Berkeley County, West Virginia for the 1997 annual PM_{2.5} NAAQS.

On April 16, 2014, the notice of proposed rulemaking (NPR) was signed by the Regional Administrator for this rulemaking action. This NPR was published in the Federal Register on May 5, 2014 (79 FR 25540) and included proposals for several rulemaking actions. First, EPA proposed to find that the Martinsburg Area met the requirements for redesignation of the Area for the 1997 annual PM_{2.5} NAAQS under section 107(d)(3)(E) of the CAA. Second, EPA proposed approval of the associated maintenance plan as a SIP revision for the 1997 annual PM_{2.5} NAAQS, which included the 2017 and 2025 for PM_{2.5} and NO_x MVEBs for purposes of transportation conformity. Third, EPA proposed approval of the 2007 comprehensive emissions inventory for the 1997 annual PM_{2.5} NAAQS to meet the requirements of section 172(c)(3) of the CAA. Finally, EPA proposed to find that the Area continues to attain the 1997 annual PM_{2.5} NAAQS.

In the May 5, 2014 NPR, EPA addressed the effects of one order and two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit Court) on the approval of the redesignation request and approval: (1) the D.C. Circuit Court's December 30, 2011 order staying Cross-State Air Pollution Control Rule (CSAPR) (i.e. Transport Rule) pending resolution

of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases); (2) the D.C. Circuit Court's August 21, 2012 decision to vacate and remand to EPA the CSAPR; and, (3) the D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the 1997 annual PM_{2.5} standard. Details of West Virginia's submittal and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Since the Regional Administrator's signature of the NPR on April 16, 2014, the Supreme Court issued a decision and order, and the D.C. Circuit Court issued an order regarding the status of EPA's regional trading programs for transported air pollution, Clean Air Interstate Rule (CAIR) and CSAPR. On April 29, 2014, the Supreme Court vacated and reversed the D.C. Circuit Court's decision regarding CSAPR and remanded that decision to the D.C. Circuit Court to resolve remaining issues in accordance with its ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). However, this April 29, 2014 Supreme Court decision did not lift the stay on the implementation of CSAPR issued by the D.C. Circuit Court by order dated December 30, 2011. In light of the April 29, 2014 Supreme Court decision, on June 26, 2014, EPA moved to have the D.C. Circuit Court's December 30, 2011 stay of CSAPR lifted. *EME Homer City Generation, L.P. v. EPA*, Case No. 11-1302, Document No. 1499505 (D.C. Cir. filed June 26, 2014). In its motion, EPA asked the D.C. Circuit Court to toll CSAPR's compliance deadlines by three years, so that the Phase 1 emissions budgets apply in 2015 and 2016 (instead of 2012 and 2013), and the Phase 2 emissions budgets apply in 2017 and beyond (instead of 2014 and beyond). On October 23, 2014, the D.C. Circuit Court granted EPA's motion and lifted the stay of CSAPR which was imposed on December 30, 2011. *EME Homer City*

Generation, L.P. v. EPA, No. 11-1302 (D.C. Cir. Oct. 23, 2014), Order at 3. EPA intends to act in accordance with the D.C. Circuit Court's October 23, 2014 order and will commence implementation of CSAPR beginning January 2015 pursuant to the D.C. Circuit Court's directive lifting the stay.

Also, in the May 5, 2014 NPR, EPA discussed the January 4, 2013 D.C. Circuit Court's decision regarding subpart 4 and a proposed rule, "Identification of Nonattainment Classification and Deadlines for Submission of SIP Provisions for the 1997 and 2006 PM_{2.5} NAAQS" (the PM_{2.5} Subpart 4 Classification and Deadline Rule) that EPA issued on November 21, 2013 (78 FR 69806), which identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 annual and/or 2006 24-hour PM_{2.5} standards. On June 2, 2014 (79 FR 31566), EPA finalized the rule.

II. Final Action

EPA is taking final action on the redesignation request and SIP revisions submitted by the State of West Virginia on August 5, 2013 for the West Virginia portion of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS. EPA is approving West Virginia's redesignation request for the 1997 annual PM_{2.5} NAAQS, because EPA has determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA.

EPA is finding that the West Virginia portion of the Martinsburg Area has attained and is continuing to attain the 1997 annual PM_{2.5} NAAQS. As explained in the NPR, West Virginia has adequately demonstrated that the improvement in air quality is due to permanent and

enforceable emissions reductions. The air quality modeling analysis conducted for the Transport Rule demonstrates that the Area would be able to attain the 1997 annual PM_{2.5} NAAQS even in the absence of either CAIR or the Transport Rule. EPA's modeling projections show that the ambient monitors in the Area are expected to continue to maintain compliance in the 2012 and 2014 "no CAIR" base cases. Therefore, none of the ambient monitoring sites in the Area are "receptors" that EPA projects will have future nonattainment problems or difficulty maintaining the NAAQS. Given the D.C. Circuit Court's October 23, 2014 order lifting the stay on CSAPR, EPA expects the State's reliance on CAIR to be replaced with reliance on CSAPR beginning in January 2015. CSAPR requires substantial reductions of SO₂ and NO_x emissions from EGUs in the Eastern United States, including West Virginia, that significantly contribute to downwind nonattainment of the 1997 PM_{2.5} and ozone NAAQS and 2006 PM_{2.5} NAAQS. Because CSAPR should result in greater emissions reductions of SO₂ and NO_x than CAIR in West Virginia and neighboring states, EPA expects the West Virginia portion of the Martinsburg Area to continue to attain the 1997 annual PM_{2.5} NAAQS through the implementation of CSAPR.

EPA is also approving the associated maintenance plan for the Martinsburg Area as a revision to the West Virginia SIP for the 1997 annual PM_{2.5} NAAQS because it meets the requirements of section 175A of the CAA. In addition, EPA is approving the 2017 and 2025 PM_{2.5} and NO_x MVEBs submitted by West Virginia for Berkeley County for transportation conformity purposes. Furthermore, EPA is approving the 2007 comprehensive emissions inventory for the 1997 annual PM_{2.5} NAAQS as a revision to the West Virginia SIP because it meets the requirements of section 172(c)(3) of the CAA. Approval of this redesignation request will change the official designation of the West Virginia portion of the Martinsburg Area from

nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will

submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the redesignation request, the maintenance plan, MVEBs, and the 2007 comprehensive emissions inventory for the West Virginia portion of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 6, 2014.

William C. Early, Acting
Regional Administrator,
Region III.

40 CFR parts 52 and 81 are amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX– West Virginia

2. In §52.2520, the table in paragraph (e) is amended by adding a new entry “1997 Annual PM_{2.5} Maintenance Plan for the West Virginia Portion of the Martinsburg, WV-Hagerstown, MD Area” at the end of the table to read as follows:

§52.2520 Identification of plan.

* * * * *

(e) ***

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * *	* * *			
1997 Annual PM _{2.5} Maintenance Plan for the West Virginia Portion of the Martinsburg WV-Hagerstown, MD Area	Berkeley County	8/5/13	[Insert the date of publication in the Federal Register] [Insert Federal Register citation]	See §52.2526(k), §52.2531(h) and §52.2532(f).

3. Section 52.2526 is amended by adding paragraph (k) to read as follows:

§52.2526 Control strategy: Particulate matter.

* * * * *

(k) EPA approves the 1997 annual PM_{2.5} maintenance plan for the West Virginia portion of the Martinsburg WV-Hagerstown, MD Nonattainment Area (Berkeley County). The maintenance plan includes the 2017 and 2025 PM_{2.5} and NOx mobile vehicle emissions budgets (MVEBs) for Berkeley County for transportation conformity purposes.

4. Section 52.2531 is amended by adding paragraph (h) to read as follows:

§52.2531 Base year emissions inventory.

* * * * *

(h) EPA approves as a revision to the West Virginia State Implementation Plan the comprehensive emissions inventory for the West Virginia portion for the Martinsburg WV-Hagerstown, MD PM_{2.5} nonattainment area submitted by the West Virginia Department of Environmental Protection on August 5, 2013. The emissions inventory includes emissions estimates that cover the general source categories of point sources, nonroad mobile sources, area sources, onroad mobile sources and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NOx), volatile organic compounds (VOC), PM_{2.5}, ammonia (NH₃), and sulfur dioxide (SO₂).

5. Section 52.2532 is amended by adding paragraph (f) to read as follows:

§52.2532 Motor vehicle emissions budgets.

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(f) EPA approves the following revised 2017 and 2025 motor vehicle emissions budgets (MVEBs) for the West Virginia portion of the Martinsburg WV-Hagerstown, MD for the 1997 Annual PM_{2.5} maintenance area submitted by the Secretary of the Department of Environmental Protection on August 5, 2013:

Applicable geographic area	Year	Tons per year PM_{2.5}	Tons per year NO_x
Martinsburg Area (Berkeley County)	2017	83	2,621
Martinsburg Area (Berkeley County)	2025	50	1,660

PART 81 – DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

6. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

7. Section 81.349 is amended by revising the entry for “Martinsburg, WV-Hagerstown, MD: Berkeley County” and footnote 2 at the end of the table titled “West Virginia — 1997 Annual PM_{2.5} NAAQS” to read as follows:

§ 81.349 West Virginia.

* * * * *

West Virginia – 1997 Annual PM_{2.5} NAAQS

[Primary and secondary]

Designated Area	Designation ^a		Classification	
	Date ¹	Type	Date ²	Type
* * * * *				
Martinsburg, WV-Hagerstown, MD:				
Berkeley County	[Insert the date of publication in the Federal Register]	Attainment		Moderate
* * * * *				

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

² This date is July 2, 2014, unless otherwise noted.

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[FR Doc. 2014-27751 Filed 11/24/2014 at 8:45 am; Publication Date: 11/25/2014]